

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2007

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND

THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.(A).No.430 of 2007

Commissioner of Income Tax
Chennai.

... Appellant/Petitioner

Vs.

Cholamandalam Inv.& Finance Co. Ltd.,
Date House, 2, NSC Bose Road,
Chennai 600 001.

... Respondent/Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench dated 1.12.2006 in ITA No.1967/Mds/2005 for the assessment year 1997-98, against the order of the Commissioner of Income Tax (A) I Chennai 600 034 in ITA.No.205/2003-2004 dated 29/6/2005 against the order of the Assistant Commissioner of Income Tax, Central Circle (1) 4, Chennai -34 in PA No.AAACC 4226H/97-98 dated 27.1.2004.

For Appellant : Mr. J.Naresh Kumar
Jr. Standing Counsel

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J U D G M E N T

(Delivered by P.D.DINAKARAN, J.)

The above tax case appeal is directed against the order of the Income-tax Appellate Tribunal in ITA No.1967/Mds/2005 dated 1.12.2006.

2. The Revenue is the appellant. The relevant assessment year is 1997-98. The Assessing Officer in a rectification proceedings dated 27.1.2004 made under Section 154 of the Income Tax Act withdrew the interest amounting to Rs.39,38,684/- granted under Section 244A on the reason that the refund arose on account of payment of self assessment tax made under Section 140A. However, on appeal, the Commissioner of Income-Tax (Appeals) by order dated 29.6.2005 allowed the interest on refund and the same was confirmed by the Income-tax Appellate Tribunal in the order dated 1.12.2006.

3. Aggrieved by the same, the Revenue has preferred the above appeal raising the following substantial question of law:

"Whether in the facts and circumstances of the case, the Tribunal was right in holding that the assessee is entitled to interest under Section 244A as per clause (i)(b) of that section when the refund had arisen on account of payment of self assessment tax?"

4. The substantial question of law referred to above revolves on the common issue as to whether the assessee is entitled to interest on the refund of tax paid under Section 140A made on self assessment, bringing the same within the purview of any other case under Section 244A(1)(b).

5.1 Before proceeding further, it is apt to refer Section 140A, which provides for payment of tax on self assessment and Section 244A which provides for the payment of interest on refund.

140A. Self-assessment.--(1) Where any tax is payable on the basis of any return required to be furnished under section 115WD or section 115WH or section 139 or section 142 or section 148 or section 153A or, as the case may be, section 158BC, after taking into account the amount of tax, if any, already paid under any provision of this Act, the assessee shall be liable to pay such tax together with interest payable under any provision of this Act for any delay in furnishing the return or any default or delay in payment of advance tax, before furnishing the return and the return shall be accompanied by proof of payment of such tax and interest.

Explanation:-- Where the amount paid by the assessee under this sub-section falls short of the aggregate of the tax and interest as aforesaid, the amount so paid shall first be adjusted towards the interest payable as aforesaid and the balance, if any, shall be adjusted towards the tax payable.

(1A) For the purposes of sub-section (1), interest payable,--

(i) under section 234A shall be computed on the amount of the tax on the total income as declared in the return as reduced by the advance tax, if any, paid and any tax deducted or collected at source;

(ii) under section 115WK shall be computed on the amount of tax on the value of the fringe benefits as declared in the return as reduced by the advance tax, paid, if any.

(1B) For the purposes of sub-section (1), interest payable under section 234B shall be computed on an amount equal to the assessed tax or, as the case may be, on the amount by which the advance tax paid falls short of the assessed tax.

Explanation:-- For the purposes of this sub-section, "assessed tax" means the tax on the total income as declared in the return as reduced by the amount of tax deducted or collected at source, in accordance with the provisions of Chapter XVII, on any income which is subject to such deduction or collection and which is taken into account in computing such total income.

(2) After a regular assessment under section 115WE or section 115WF or section 143 or section 144 or an assessment under section 153A or section 158BC has been made, any amount paid under sub-section (1) shall be deemed to have been paid towards such regular assessment or assessment, as the case may be.

(3) If any assessee fails to pay the whole or any part of such tax or interest or both in accordance with the provisions of sub-section (1), he shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of the tax or interest or both remaining unpaid, and all the provisions of this Act shall apply accordingly.

244A. Interest on refunds.--(1) Where refund of any amount becomes due to the assessee under this Act, he shall, subject to the provisions of this section, be entitled to receive, in addition to the said amount, simple interest thereon calculated in the following manner, namely:--

(a) where the refund is out of any tax paid under section 115WJ or collected at source under section 206C or paid by way of advance tax or treated as paid under section 199, during the financial year immediately preceding the assessment year, such interest shall be calculated at the rate of one half per cent for every month or part of a month comprised in the period from the 1st day of April of the assessment year to the date on which the refund is granted:

Provided that no interest shall be payable if the amount of refund is less than ten per cent of the tax as determined under sub-section (1) of section 143 or on regular assessment;

(b) in any other case, such interest shall be calculated at the rate of one-half per cent for every month or part of a month comprised in the period or periods from the date or, as the case may be, dates of payment of the tax or penalty to the date on which the refund is granted.

Explanation.--For the purposes of this clause, "date of payment of tax or penalty" means the date on and from which the amount of tax or penalty specified in the notice of demand issued under section 156 is paid in excess of such demand.

(2) If the proceedings resulting in the refund are delayed for reasons attributable to the assessee, whether wholly or in part, the period of the delay so attributable to him shall be excluded from the period for which interest is payable, and where any question arises as to the period to be excluded, it shall be decided by the Chief Commissioner or Commissioner whose decision thereon shall be final.

(3) Where, as a result of an order under sub-section (3) of section 115WE or section 115WF or section 115WG or sub-section (3) of section 143 or section 144 or section 147 or section 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 263 or section 264 or an order of the Settlement Commission under sub-section (4) of section 245D, the amount on which interest was payable under sub-section (1) has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly, and in a case where the interest is reduced, the Assessing Officer shall serve on the assessee a notice of demand in the prescribed form specifying the amount of the excess interest paid and requiring him to pay such amount; and such notice of demand shall be deemed to be a notice under section 156 and the provisions of this Act

shall apply accordingly.

(4) The provisions of this section shall apply in respect of assessments for the assessment year commencing on the 1st day of April, 1989, and subsequent assessment years. Provided that in respect of assessment of fringe benefits, the provisions of this sub-section shall have effect as if for the figures "1989", the figures "2006" had been substituted.

5.2. Even though the short title to Section 140A reads as Self-assessment, the charging phrase employed in Section 140A namely "Where any tax is payable on the basis of any return required to be furnished under Section 115WD or Section 115WH or Section 139 or Section 142 or Section 148 or Section 153A as the case may be; "the assessee shall be liable to pay such tax together with interest payable under any provision of this Act for any delay in furnishing the return", makes it clear that there is no difference between:

- (i) the tax paid under Section 115WJ, which deals with Advance tax in respect of fringe benefits; or
- (ii) the tax collected at source under Section 206C; or
- (iii) any tax paid by way of advance tax or any tax treated as paid under Section 199, which deals with Credit for tax deducted, which are provided under Section 244A(1)(a).

5.3. Proviso to Section 244A(1)(a) makes it clear that no interest shall be payable if the amount of refund is less than 10% on regular assessment with regard to the refund of advance tax paid under Section 115WJ in respect of fringe benefits; (ii) tax collected at source under Section 206C; and (iii) advance tax or any tax treated as paid under Section 199. But, with respect to other tax as per Section 244A(1)(b), the interest shall be payable even if the amount is less than 10% of the tax as determined under Section 143(1) or on regular assessment, because there is no proviso to Section 244A(1)(b) as provided under Section 244A(1)(a).

5.4. That apart, the law is well settled that even for the refund of tax paid under Section 140A on self assessment, the assessee is entitled to interest as held by this Court in Commissioner of Income-tax vs. Ashok Leyland Ltd. (2002) (254 ITR 641).

5.5. It is also trite law that wherever the assessee is entitled to refund, there is a statutory liability on the Revenue to pay interest on such refund on general principles to pay interest on sums wrongfully retained.

5.6. We are also strengthened by the decision of the Apex Court for the above view taken in Sandvik Asia Ltd. vs. Commissioner of Income-tax (2006) (280 ITR 643), wherein it is held as follows:

"In view of the express provisions of the Income-tax Act, 1961, an assessee is entitled to compensation by way of interest for the delay in the payment of amounts lawfully due to the assessee which are withheld wrongly and contrary to law. The Government is liable to pay interest, at the rate applicable to the excess amount refunded to the assessee."

5.7. Finding no substantial question of law that arises for our consideration, the appeal is dismissed.

ATR

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To,

1. The Asst.Registrar
Income Tax Appelate Tribunal
Bench "A" Rajaji Bhavan,
3rd Floor, Besant Nagar, Madras-90 (5 Copies)
2. The Commissioner of InCome Tax (A) I, Chennai-34.
3. The Asst.commissioner of Income Tax,
Central Circle I (4), Chennai- 600 034.
4. The Commissioner of Income Tax, Chennai.

+1 cc to Mrs.Pushya Sitaraman,
Standing Counsel for IT, Sr.No.32691.

NTK (CO)
dcp/27.6.07

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